IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 368 of 1985

in

SPECIAL CIVIL APPLICATIONNo 247 of 1985

with

CIVIL APPLICATGION NO. 3905 OF 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CK RAVAL

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 368 of 1985

NOTICE SERVED for Appellant No.

MS SONAL VYAS AGP for Respondent No. 1-2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 23/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing instant appeal under clause 15 of the Letters Patent, the appellant has challenged legality of judgment dated October 4, 1985 rendered by the learned Single Judge in Special Civil Application No. 247 of 1985 by which the prayer made by him to issue a writ of mandamus or any other appropriate writ or order directing the respondents to absorb him as a lecturer in the scale of RS.650-1200 in any Government Ayurved College in the State of Gujarat with effect from June 1982 and give him all consequential benefits including seniority, arrears of difference of salary, increments, etc., is refused.

2. The appellant was working as Assistant Pharmacist, Government Ayurved Pharmacy College, Rajpipla. Initially he was appointed as Demonstrator at the Government Ayurved Pharmacy College, Rajpipla with effect from July 17, 1972 and thereafter was promoted to the post of Lecturer - Grade III in the pay scale of Rs.500-900 withe effect from September 1, 1978. Subsequently, by a Government Resolution dated October 5, 1981 the time scale of Lecturers was revised from Rs.500-900 to Rs.650-1200. But the Rajpipla College where the appellant was serving was closed in June 1982 and, therefore, by order dated June 4, 1982 the Director of Ayurved had treated the appellant as surplus staff and ordered that he be absorbed as Assistant Pharmacist, Class III in the pay scale of Rs.500-900. The appellant claimed that the direct recruitment sought to be resorted to by the respondents for the post of Pharmacist was illegal and that he was entitled to be promoted to the said post. Thus he filed the petition and claimed the reliefs to which reference is made earlier.

3. On service of notice, the Director of Indian System of Medicine and Homoeopathy had filed reply affidavit to which rejoinder was filed by the appellant. The learned Single Judge has dismissed the petition by judgment dated October 4, 1985 giving rise to instant appeal.

4. It may be stated that on elevation of the learned advocate of the appellant on Bench, a notice was issued by the office to the appellant calling upon him to make

necessary arrangement for appearance in the matter either in person or through lawyer. Though the notice is duly served the appellant has neither remained personally present for arguing the case nor engaged advocate to prosecute the appeal. The appeal is notified on Board for final hearing three times. The appeal is very old, that is, of the year 1985. Under the circumstances, this Court has decided to consider the case on merits with the assistance of Ms. Sonal Vyas, learned AGP appearing for the respondents.

5. There is no manner of doubt that the appellant was rendered as surplus due to closure of Rajpipla Ayurved College and but for the order of the Director of Ayurved to absorb the appellant as Assistant Pharmacist, Class III in the pay scale of Rs.500-900, the appellant would have lost the job. The absorption order was accepted and acted upon by the appellant. The affidavit in reply filed on behalf of the respondents would indicate that at the time when the petitioner was absorbed as Assistant Pharmacist, no post in the time scale of Rs.650-1200 was available. Consequently, this Court is of the opinion that the learned Single Judge did not commit any error in not entertaining the grievance of the appellant regarding non-absorption on the post carrying higher time scale of Rs.650-1200. The service record of the appellant unerringly shows that while he was working as Lecturer the appellant had obtained practical experience in Gujarat Ayurved Vikas Mandal and thereafter in Rajpipla college. The stand of the respondents was that as per the recruitment rules, three years' practical experience as full-fledged Pharmacist in Government Ayurved College was required and no part time experience while working as Lecturer was to be countenanced for the purpose of complying with the requirement of Recruitment Rules. In view of this, non-promotion of the appellant to the post of Pharmacist is rightly not regarded as illegal. Further the appellant had applied for the post of Pharmacist when it was sought to be filled up by direct recruitment but had failed to get selected. Under the circumstances, the question of promotion of the appellant as Pharmacist would not survive. The view taken by the learned Single Judge cannot be regarded as illegal or contrary to statutory rules so as to warrant interference of this Court in the instant appeal. The result is that there is no merits in the appeal and the appeal deserves to be dismissed.

6. For the foregoing reasons, the appeal fails and is dismissed. There shall be no orders as to cost.

7. As the main appeal is disposed of, Civil Application for interim relief during the pendency of the appeal would not survive. Therefore, the Civil Application is dismissed. Rule is discharged. There shall be no orders as to cost. Interim relief granted in Civil Application by orders dated October 1, 1985 and October 16, 1985 is hereby vacated.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)

(karan)